

Exhibit D

Feds probing McGraw's handling of Purdue Pharma settlement

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By **John O'Brien** -Statehouse Bureau

CHARLESTON - When Fran Hughes, state Attorney General Darrell McGraw's chief deputy, testified before the state's Legislature in February about the office's appropriation of settlement funds, she claimed a desire for a low profile.

"We are not interested in being the center of controversy," she said.

But a statement she made later in the proceedings apparently might keep that from happening.

A federal agency recently told *The West Virginia Record* that it is in contact with the State over issues surrounding McGraw's 2004 settlement with Purdue Pharma, the manufacturer of the prescription painkiller OxyContin. The drug's addiction capabilities put a strain on the state's partially federally funded Medicaid program, McGraw argued, by creating addicts that needed care.

The federal government is responsible for 73 cents of every dollar the state spends on Medicaid, and the settlement was worth \$10 million. However, McGraw distributed the proceeds to organizations of his choice instead of letting the Legislature appropriate the money. Controversy kicked in when he gave the University of Charleston \$500,000 for a pharmacy school.

At the February hearing, Hughes said that if the money had been turned over to the state's Department of Health and Human Resources (the agency McGraw claimed was harmed by Purdue Pharma), then the federal government would have been able to retain the portion it contributed through Medicaid -- 73 cents of every dollar.

"We have arranged a methodology that has prevented the federal government from coming back and seizing money," Hughes said.

When asked if that constituted Medicaid fraud, Mary Kahn, spokesperson for the federal Centers for Medicaid and Medicare Services, responded, "We are currently discussing this issue with the state. I am not able to expand on that comment right now as there is no outcome to these discussions."

A letter sent from CMS Director Dennis Smith to Leonard Kelley, the Deputy Commissioner for the state's Bureau for Medical Services, says it has not received its portion of the settlement fund, nor was that portion withheld from the following year's federally-provided budget, as is done with these types of cases, Kahn said. The Bureau for Medical Services is a part of the state's DHHR.

"(T)o the best of our knowledge, no proceeds of this settlement have been paid or credited to the federal government as repayment of the federal share of Medicaid expenses," states the letter, which also cites a *West Virginia Record* story.

According to her bio, Hughes, who could not be reached at presstime, previously served as general counsel for Human Services Management, a national consulting firm specializing in Medicaid financing.

"The State of West Virginia's methodology in arranging its settlement does not change the nature of the settlement nor the (DHHR) Secretary's obligation to account for overpayments," the letter says.



Hughes

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"Please advise CMS of any reason you may offer for which it should not issue a disallowance against the Medicaid program of the State of West Virginia in the amount of the settlement."

Even after Hughes promised not to spend any more of the settlement money during her testimony, the office doled out more than \$1 million to several day report centers around the state in the next month.

It was money the DHHR really could have used, according to Citizens Against Lawsuit Abuse President Steve Cohen.

Last year, Gov. Joe Manchin made cuts to the DHHR-run Aged and Disabled Waiver Program, which provided in-home nursing care to those who needed it. Manchin previously froze the program's budget at \$60 million, then attempted to cut more than one-third of the 5,400 enrolled.

However, one man claimed the cuts discriminated against a certain group of disabled and filed suit. McGraw, who again represented the DHHR, then filed to intervene on behalf of the plaintiffs. Before he had a chance to be working both sides of the case, Manchin gave in and nixed the cuts.

"West Virginia's Medicaid program may not have been short of funds to help our seniors if Darrell McGraw had turned over the share of the \$10 million Purdue Pharma settlement which was owed to (DHHR) Secretary (Martha) Walker's department," Cohen said.

Also as a result of the settlement, \$2 million were given to private practice attorneys appointed to special assistant attorneys general by McGraw.

When Sen. Vic Sprouse of Charleston, a Republican, asked Hughes how McGraw decided where money should go and told her the office was acting on its own without consulting the Legislature, she replied, "We act often like a private attorney that is holding money in trust for the benefit of a client."

Sprouse asked why the money did not go to general revenue or the Department of Health and Human Resources. Hughes answered that the state needs pharmacists to fight drug abuse, and there was no pharmacy school in the southern part of the state.

"It shouldn't be the Attorney General's office making that decision, to open a pharmacy school," Sprouse said. "Did DHHR say we don't want (the money)? Give it to U.C.?"

Hughes said, "I assume their attorney acted in their behalf at settlement negotiations. They were there and they signed off."

Purdue Pharma recently settled with 27 other attorneys general, agreeing to pay a total of nearly \$20 million. It also pled out of federal criminal charges, paying more than \$600 million to do so.

"Any state that recovers money from a case such as this -- whether they claim they overpaid for a product, or convinced a court they incurred extra costs from the wrongdoing of Pharma, or in any way used Medicaid money for something improper and want to get back its share of the money -- whatever the federal share of that amount is owed back to (the federal government)," Kahn said.